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April 18, 2011

Gloria Moran, Esq.
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U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
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*Via Certified Mail/Return Receipt Requested
& E-mail to Moran.Gloria-Small@epamail.epa.gov*

In Re: Falcon Refinery Superfund Site/2725 Bishop Road, Ingleside, San Patricio County,
Texas

Dear Ms. Moran:

As counsel for National Oil Recovery Corporation ("Norco"), I wish to advise you that on April 5, 2011, I received from Pamela Phillips, Acting Director Superfund Division, a letter dated March 28, 2011, informing me that, among other things, the United States Environmental Protection Agency ("EPA") has determined it necessary to take over performance of the remaining work required under the Administrative Order On Consent For Remedial Investigation and Feasibility Study (the "RI/FS AOC") and the Administrative Order On Consent For Removal Action (the "Removal AOC") (collectively, the AOC's") referenced in said letter (the "Notice").

The Notice was erroneously addressed and was accompanied by your letter, dated March 31, 2011, also received by me on April 5, 2011.

As you know, Norco and the EPA, on Thursday, April 14, 2011, reached an oral agreement whereunder, among other things, Norco will be allowed to begin and complete the remaining work under the Removal AOC. This agreement will be memorialized by a written agreement to be signed by Norco and the EPA. This letter will cover Norco's position relative to the RI/FS AOC.

Norco does hereby advise the EPA that Norco objects to the EPA taking over the remaining work under the RI/FS AOC and does hereby invoke the Dispute Resolution provisions (Article XX, paragraphs 65 and 66) of the RI/FS AOC.

Based on my review of the Notice and the relevant provisions of the Removal AOC and the RI/FS AOC, it is Norco's position that it has the right to invoke the Dispute Resolution provisions of both AOC's, not just the Removal AOC, as you have advised.

The Dispute Resolution provisions of the RI/FS AOC cover "[a]ny disputes concerning activities . . . under this Order" The EPA's decision to take over the remaining work under the RI/FS AOC and the actions to be taken and demands made are clearly "activities" for which the Dispute Resolution provisions are applicable.

It would be implausible and a clear violation of Norco's rights for the EPA to argue on the one hand that it is taking over the work under the RI/FS AOC, but leaving Norco without an appeal remedy of this most onerous Order. Moreover, your position would lead to an unworkable bifurcation of the remaining work to be done under both AOC's, with Norco and TRC performing the remaining work under the Removal Order and the EPA's new contractor performing the remaining work under the RI/FS Order and Norco still being responsible for the quality of the work and the cost.

The issue in dispute is whether the EPA was justified in taking over performance of the remaining work required under the RI/FS AOC. The primary objection to the work takeover by the EPA is the fact that the EPA was not aware of the facts set out below when the decision was made to take over the remaining work under the RI/FS AOC. Had these facts been known, Norco is confident the work-takeover decision would not have been made.

I believe everyone is in accord there is no immediate danger to health and to the environment at the Falcon Refinery site.

Background

To date, Norco has spent over \$2,500,000.00 dollars in performing its obligations under the AOC's. This work was done by Kleinfelder, Inc. under the direction of Stephen Halasz, who, as you know, was the Project Coordinator in respect of the AOC's on behalf of Norco.

As relates to the RI/FS AOC, Norco has performed the following work:

- Participated in Project planning with the EPA and Federal and State Trustees
- Developed an RI/FS Work Plan
- Amended the RI/FS Work Plan (EPA approved)
- Developed a Community Involvement Plan (EPA approved)
- Provided notice and sent out flyers on two occasions announcing community meetings
- Participated in two community meetings
- Developed a Site Specific Health and Safety Plan (EPA approved)
- Submitted a Quality Management Plan (EPA approved)

- Submitted a Quality Assurance Project Plan (EPA approved)
- Submitted a Field Sampling Plan
- Amended the Field Sampling Plan (EPA approved)
- Performed the Field investigation for Phase I Field Sampling plan, which included:
 - Site Physiography;
 - Site Geology;
 - Site Hydrogeology;
 - Site Biological Features;
 - Definition of Source;
 - Definition of Contamination; and
 - Description of Nature and Extent

Norco has contracted with TRC Environmental Corporation ("TRC"), by Master Service Agreement, dated February 28, 2011, to finish the remaining work required under the Removal AOC. The EPA is in receipt of data qualifying TRC for this task. Stephen Halasz, who was Norco's Project Coordinator while at Kleinfelder, will head-up the work for TRC.

TRC has listed the major deliverables for completion of the RI/FS AOC, they being:

- Gain approval from the EPA to begin the previously approved Phase II Field Sampling Plan;
- Gain approval from the EPA for the amended Quality Control Project Plan, which was previously approved;
- Gain approval from the EPA for the Quality Management Plan;
- Perform the Phase II Field Sampling Plan;
- Phase II Data Analysis;
- Phase II Document Management Procedures;
- Develop and Submit the Preliminary Site Characterization Summary Report;
- Develop and Submit the Baseline Human Health Risk Assessment;
- Develop and Submit the Screening Level Ecological Risk Assessment;
- Develop and Submit the Baseline Ecological Risk Assessment Report (if necessary);
- Submit the Candidate Technologies and or need for Testing Report;
- Develop and Submit the Treatability Study Report;
- Develop and Submit the Remedial Investigation Report;
- Develop and Submit the Detailed Analyses of Alternatives for Remedial Action;
- Submit the Nine Criteria Analysis Memorandum;
- Submit the Remedial Alternatives Comparative Analysis Report;
- Present to the EPA Remedial Action Objectives, Alternatives and Comparative Report; and
- Prepare and Submit the Final Feasibility Study Report

Facts Not Known To EPA

The sale of the Falcon Refinery was scheduled for closing on March 15, 2011, at the offices of Stewart Title Guaranty Company, Houston, Texas ("Stewart Title"). At the beginning of the negotiations between the Buyer and Norco's representative, the Buyer ordered a Title Commitment from Stewart Title. There were no material title issues reflected in the Schedule C of the initial Title Commitment. As part of the Buyer's pre-closing procedure, the Buyer in early March 2011, ordered an updated Title Commitment from Stewart Title, wherein for the first time on Schedule C there were reported material title issues that had to be cleared before Stewart Title could issue an Owner's Title Policy. Part of the delay in resolving these Schedule C issues was the fact Stewart Title's office in Portland, Texas, prepared the updated Title Commitment and copies of the underlying documents had to be ordered from that office, while the office of Stewart Title in charge of clearing the title issues was located in Dallas, Texas, and the closing was scheduled for Houston, Texas. This administrative troika had to be cleared first. The Schedule C issues required Norco to undertake remedial document work and have them approved by Stewart Title. These new title requirements and the resolving thereof caused the March 15, 2011, closing to be extended until March 31, 2011, which closing change and the reason therefore was communicated to the EPA by e-mail on March 21, 2011.

On Friday, March 25, 2011, the last of the Schedule C title issues was resolved to the satisfaction of Stewart Title and the March 31, 2011, closing was scheduled to go forward. However, late Friday afternoon on March 25, 2011, you paid me the courtesy of advising by telephone that the EPA had decided to take over the remaining work to be done under the AOC's and to impose on Norco's property a lien to secure such takeover. I reported these activities to the Buyer's counsel, which caused the March 31, 2011, closing to be cancelled, in order to give the Buyer an opportunity to determine the impact of the proposed lien and the work takeover on the Buyer's intended use of the Norco property and its financing of the acquisition.

The Buyer has completed this last minute due diligence, and the Buyer is prepared to consummate the purchase and sale of the Falcon Refinery site, provided the EPA forgoes placing a lien on Norco's property at this time and allows Norco to perform the remaining work under the RI/FS AOC. To show its good faith, the Buyer, under the terms of the purchase and sale contract, has placed \$250,000.00 in an Escrow Account under the supervision of representatives from the Buyer and Norco. The funds in this Escrow Account are to be used immediately and exclusively to fund the remaining work under the AOC's. At the closing, an additional \$1,750,000.00 will be placed in the Escrow Account to be used exclusively for the remaining work to be done under the AOC's. This Escrow Deposit, when taken with Norco's two \$500,000.00 letters of credit, will total \$3,000,000.00 additional funds to complete the remaining work to be done under the AOC's.

Norco and the Buyer have no problem in revising their Escrow Agreement to include a representative of the EPA as a Co-Escrow Agent of the Escrow Account, in order to guarantee the proper use of the Escrow Funds.

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For the foregoing reasons, Norco respectfully requests that the EPA allow Norco the opportunity to begin and complete the work remaining to be done under the RI/FS AOC.

Thank you for your consideration to this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. F. Bergner", with a stylized flourish at the end.

Richard F. Bergner
Attorney for National Oil Recovery Corporation

RFB:sjh